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DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final priority. Rehabilitation Services Administration--
Assistive Technology Alternative Financing Program

[CFDA Number: 84.224D.]

AGENCY: Office of Special Education and Rehabilitative
Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and
Rehabilitative Services announces a priority under the
Assistive Technology Alternative Financing Program
administered by the Rehabilitation Services Administration
(RSA). The Assistant Secretary may use this priority for
competitions in fiscal year (FY) 2014 and later years.

This priority is designed to ensure that the Department
funds high-quality assistive technology (AT) alternative
financing programs (AFPs) that meet rigorous standards in
order to enable individuals with disabilities to access and
acquire assistive technology devices and services necessary
to achieve education, community living, and employment
goals.

EFFECTIVE DATE: This priority is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., room 5025, Potomac Center Plaza (PCP), Washington, DC 20202-2800. Telephone: (202) 245-7393 or by email: robert.groenendaal@ed.gov.

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SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Assistive Technology Alternative Financing Program (AFP) is to support programs that provide for the purchase of AT devices, such as a low-interest loan fund, an interest buy-down program, a revolving loan fund, a loan guarantee, or an insurance program. The Consolidated Appropriations Act, 2014 (the Act) requires applicants for these grants to provide an assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control. It also specifies that State agencies and community-based disability organizations that are directed by and operated for individuals with disabilities

are eligible to compete. Language in the Explanatory Statement accompanying the Act provides that successful applicants must emphasize consumer choice and control and build programs that will provide financing for the full array of AT devices and services and ensure that all people with disabilities, regardless of type of disability or health condition, age, level of income, and residence, have access to the program. In addition, the language provides that applicants should incorporate credit-building activities in their programs, including financial education and information about other possible funding sources.

Program Authority: Consolidated Appropriations Act, 2014 (P.L. 113-76).

We published a notice of proposed priority for this competition in the Federal Register on May 13, 2014 (79 FR 27230). That notice contained background information and our reasons for proposing this particular priority.

Except for minor editorial and technical revisions, there are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, 16 parties submitted comments on the proposed priority. Generally, we do not address

technical or other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: Two commenters suggested that there should be a provision for a multi-State consortium to apply. One commenter, however, expressed opposition to multi-State consortia AT loan programs because of a concern that these consortia would duplicate State programs. This commenter proposed that AFPs should have knowledge of State-specific AT resources.

Discussion: There is nothing in the priority or regulations that prevents a multi-State consortium from applying. Under 34 CFR 75.127, eligible parties may apply as a group for a grant; and "consortium" is a term that may be used to refer to a group of eligible parties. We will clarify in the notice inviting applications for this competition that multi-State groups or consortia are eligible to apply.

We agree with the commenter that grantees should be knowledgeable about State-specific AT resources, and believe that the applicable selection criteria address this concern. Specifically, among the selection criteria in 34

CFR 75.210(a) that the Secretary may consider when determining the need for a proposed project is the magnitude of the need for the services to be provided or the activities to be carried out and the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. We will use the peer review process to determine how well an applicant addresses the needs of the service area identified in the application.

Changes: None.

Comment: Seven commenters expressed opposition to the competitive preference points. On the other hand, three commenters supported the proposed competitive preference priorities, citing the need for AFPs in every State. One commenter suggested that priority points be awarded to existing AFPs with a history of successful operation.

Discussion: Twenty of the States and outlying areas have not received funding for AT AFPs. While all States and outlying areas can apply, our objective is to establish AFPs in States that have not previously received funding from the Federal government for this purpose and to expand small or underfunded AFPs that have received less than \$1

million from competitions under title III of the Assistive Technology Act of 1998 (AT Act of 1998) during FYs 2000 through 2006, or under the Appropriations Acts for FY 2012 and 2013. By awarding competitive preference points to applicants, we intend to address the need for the development of AFPs from these unserved or underfunded areas so individuals with disabilities across the nation have the opportunity to receive services and purchase AT devices through alternative loan programs.

Changes: None.

Comment: Two commenters suggested that consumers be entitled to exercise choice and control with respect to the makeup of the board of directors of grantees; and that the boards should include a majority of members with disabilities. One of these commenters questioned whether family members should be counted toward this majority.

Discussion: The Act and the priority require that grantees emphasize and expand consumer choice and control, including oversight of the program. Although we encourage grantees to include individuals with disabilities and their family members on their boards of directors, the requirement in the Act does not specifically apply to the composition of the grantees' boards. It applies to the involvement of

consumers in the implementation of a program's administration and policy decisions. This could be achieved in a number of ways, including having a majority of the members of the project's board of directors or loan review committee be individuals with disabilities. In addition, consumer choice and control applies to consumers who are receiving financial loans having choices and control over the selection of devices and vendors.

Each applicant is required to submit an assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control. As AFPs must be designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices or services, the consumer choice and control requirement applies to family members of individuals with disabilities. As such, a family member could serve on a board of directors or loan review committee. We will use the competitive process to determine the extent to which an application proposes to achieve consumer choice and control.

Changes: None.

Comment: One commenter supported credit-building activities as an important component of AFPs. This commenter proposed that grantees be required to provide financial education and counseling to consumers to improve their financial capability, knowledge, and skills and advance their economic stability.

Discussion: The final priority requires applicants to submit an assurance that the AFP will incorporate credit-building activities into their programs, including financial education and information about other possible funding sources. We will use the competitive process to determine the extent to which an applicant proposes to meet this requirement.

Changes: None.

Comment: One commenter recommended that the Department consider a State's size, population, number of people with disabilities, and other unique qualities in evaluating a grant application.

Discussion: Our objectives are to establish AFPs in States and outlying areas that have not previously received funding from the Federal government for this purpose and to expand small or underfunded AFPs that have received less than \$1 million from competitions under title III of the AT

Act of 1998 during FYs 2000 through 2006 or under the Appropriations Acts for FYs 2012 and 2013. However, we note that the "Need for Project" selection criterion in 34 CFR 75.210(a) includes "the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project" and the "extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project." We believe that this selection criterion addresses the commenter's suggestion that we consider a State's size, population, number of people with disabilities, and other unique qualities in evaluating a grant application. We encourage applicants to address these factors in the "Need for Project" section of the application. We also note that the State Grant for Assistive Technology program, a formula grant program funded under the AT Act of 1998, as amended, that provides grants to every State and outlying area and considers a grantee's size and population in making awards, authorizes grantees to develop programs that are similar to the AFPs as one of their activities.

Changes: None.

Comment: One commenter suggested that the Department support existing AFPs that have been effective but have little or no Federal funding remaining.

Discussion: All States and outlying areas are eligible to apply. However, we believe that the States and outlying areas that have not previously received funding from the Federal government for this purpose or that have small or underfunded AFPs that have received less than \$1 million from competitions under title III of the AT Act of 1998 during FYs 2000 through 2006 or under the Appropriations Acts for FY 2012 and 2013 should receive competitive priority.

Changes: None.

Comment: One commenter suggested that no new programs be established with less than \$3 million. According to this commenter, without this amount of funding, a State cannot meet the need for loans. This commenter also recommended that RSA encourage any State that has less than \$1 million in loanable funds to freeze the program until adequate resources are available.

Discussion: The Act provided a total of \$2 million for the AT AFP competition, which is \$1 million less than the minimum amount recommended by the commenter. We agree that

small AFPs should have the opportunity to acquire additional funds, and are establishing a competitive preference priority for programs that received less than \$1 million in funds from competitions under title III of the AT Act of 1998 during FYs 2000 through 2006 or under the Appropriations Acts for FYs 2012 and 2013. However, we do not agree that an AFP needs a minimum of \$3 million to be effective or that an AFP with less than \$1 million in loanable funds should be frozen. Many of the programs that received less than \$1 million in Federal funding in the past make significant numbers of alternative financing loans and have proved themselves to be beneficial to individuals with disabilities in their States.

Changes: None.

Comment: Two commenters suggested that RSA should support only consumer-controlled, non-profit or community-based organizations as grantees under this program in FY 2014.

Discussion: Because the Act states who is eligible for an award, we do not have the authority to change the program's eligibility requirements. Specifically, the Act states, "State agencies and community-based disability organizations that are directed by and operated for

individuals with disabilities shall be eligible to compete."

Changes: None.

Comment: One commenter expressed support for the 10 percent limit on indirect expenses, and suggested that RSA collect fiscal expenditure data on an annual basis to ensure compliance.

Discussion: For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the portion of the grant award that is used annually for program administration related to the AFP. RSA supports the 10 percent limit on indirect expenses and will monitor grantees to ensure compliance with this requirement.

Changes: None.

FINAL PRIORITY:

Assistive Technology Alternative Financing Program.

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority to fund one-year grant awards to support AFPs that assist individuals with disabilities to obtain financial assistance for AT devices and services.

Under this priority, applicants must establish or expand one or more of the following types of AFPs:

- (1) A low-interest loan fund.
- (2) An interest buy-down program.
- (3) A revolving loan fund.
- (4) A loan guarantee or insurance program.
- (5) Another mechanism that is approved by the Secretary.

AFPs must be designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices or services. If family members, guardians, advocates, and authorized representatives (including employers who have been designated by an individual with a disability as an authorized representative) receive AFP support to purchase AT devices or services, the purchase must be solely for the benefit of an individual with a disability.

To be considered for funding, an applicant must identify the type or types of AFP(s) to be supported by the grant and submit all of the following assurances:

- (1) Permanent Separate Account: An assurance from the applicant that--

(a) All funds that support the AFP, including funds repaid during the life of the program, will be deposited in a permanent separate account and identified and accounted for separately from any other funds;

(b) If the grantee administering the program invests funds within this account, the grantee will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and

(c) The grantee will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of that person.

(2) Permanence of the Program: An assurance that the AFP will continue on a permanent basis.

An applicant's obligation to implement the AFP consistent with all of the requirements, including reporting requirements, continues until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid. If a grantee decides to terminate its AFP while there are still funds available to operate the program, the grantee must return the funds remaining in the permanent separate account to the U.S. Department of the Treasury except for funds being used for grant

purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the grantee also must return any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(3) Consumer Choice and Control: An assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control.

(4) Supplement-Not-Supplant: An assurance that the funds made available through the grant to support the AFP will be used to supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms.

(5) Use and Control of Funds: An assurance that funds comprised of the principal and interest from the account described in paragraph (1) Permanent Separate Account of this priority will be available solely to support the AFP.

This assurance regarding the use and control of funds applies to all funds derived from the AFP, including the original Federal award, AFP funds generated by either interest-bearing accounts or investments, and all principal

and interest paid by borrowers of the AFP who are extended loans from the permanent separate account.

(6) Indirect Costs: An assurance that the percentage of the funds used for indirect costs will not exceed 10 percent of the portion of the grant award that is used annually for program administration (excluding funds used for loan activity).

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the portion of the grant award that is used annually for program administration related to the AFP.

(7) Administrative Policies and Procedures: An assurance that the applicant receiving a grant under this priority will submit to the Secretary for review and approval within the 12-month project period the following policies and procedures for administration of the AFP:

(a) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and

determination of the specific AT device or service to be financed through the program.

(b) A policy and procedure to ensure that individuals are allowed to apply for financing for a full array of AT devices and services regardless of type of disability or health condition, age, income level, location of residence in the State, or type of AT device or service for which financing is requested through the program. It is permissible for programs to target individuals with disabilities who would have been denied conventional financing as a priority for AFP funding.

(c) A procedure to ensure consumer choice and consumer-controlled oversight of the program.

(d) A sustainability plan, including information on the percentage of funds expected to be used for operating expenses and loan capital.

(8) Data Collection: An assurance that the applicant will collect and report data requested by the Secretary in the format, with the frequency, and using the method established by the Secretary until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid.

(9) Credit Building Activities: An assurance that the AFP will incorporate credit-building activities into its programs, including financial education and information about other possible funding sources.

Competitive Preference Priorities: Within this priority, we announce two competitive preference priorities.

These priorities are:

Need to Establish an AFP (10 additional points): This applies to an applicant located in a State or outlying area where an AFP grant has not been previously awarded under title III of the AT Act of 1998 or under the Appropriations Acts for FYs 2012 and 2013.

Need to Expand an AFP (5 additional points): This applies to an applicant located in a State or outlying area where an AFP grant has been previously awarded under title III of the AT Act of 1998 or under the Appropriations Acts for FYs 2012 and 2013, but the State or outlying area has received less than a total of \$1 million in Federal grant funds for the operation of its AFP under title III of the AT Act of 1998 during fiscal years 2000 through 2006 and the appropriations Acts for FYs 2012 and 2013.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or

selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its

costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes

developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

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Dated: August 11, 2014

Michael K. Yudin,
Acting Assistant Secretary for
Special Education and
Rehabilitative Services.

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